

EXHIBIT J



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Loreaux v. ACB Receivables Mgmt.

United States District Court for the District of New Jersey

August 25, 2015, Decided; August 25, 2015, Filed

Civil Action No. 14-710 (MAS)

Reporter

2015 U.S. Dist. LEXIS 112250 *; 2015 WL 5032052

LOGAN LOREAUX, et al., Plaintiffs, v. ACB
RECEIVABLES MANAGEMENT, INC., et al.,
Defendants.

Prior History: [Loreaux v. ACB Receivables
Mgmt., 2014 U.S. Dist. LEXIS 165788 \(D.N.J.,
Nov. 26, 2014\)](#)

Core Terms

discovery, bifurcating, correspondence, debt
collection, argues, costs, motion to bifurcate,
deceptive, summary judgment motion,
discovery request, dispositive issue,
burdensome, parties, reasons

Counsel: [*1] For LOGAN LOREAUX, an
infant by parent and natural guardian
KATELYN JONES, KATELYN JONES,
individually; on behalf of herself and all others
similarly situated, Plaintiffs: JOSEPH K.
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For ACB RECEIVABLES MANAGEMENT,
INC., JONATHAN S. ZISS, LEAD
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PHILADELPHIA, PA.

Judges: HONORABLE TONIANNE J.
BONGIOVANNI, UNITED STATES
MAGISTRATE JUDGE.

Opinion by: TONIANNE J. BONGIOVANNI

Opinion

MEMORANDUM OPINION

BONGIOVANNI, Magistrate Judge,

This matter comes before the Court upon Defendant ACB Receivables Management, Inc.'s ("ACB") motion to bifurcate discovery. [Docket Entry No. 24]. Plaintiffs Logan Loreaux, an infant by parent and natural guardian Katelyn Jones, and Katelyn Jones ("Plaintiffs") oppose ACB's motion. The Court has fully reviewed and considered all of the arguments made in support of and in opposition to ACB's motion. The Court considers same without oral argument pursuant to L.Civ.R. 78.1(b). For the reasons set forth more fully below, ACB's motion is GRANTED.

I. Background and Procedural History

In light of the parties' familiarity with the facts of this matter, they shall not be restated at length herein. Instead, the Court [*2] shall recount only those facts necessary for the resolution of ACB's motion to bifurcate. This case concerns whether the debt collection correspondence sent by ACB to Plaintiffs allegedly listing an "Amount Due" different than the "Amount Owed" was false, deceptive or misleading within the meaning of the Fair Debt Collection Practices Act (the "FDCPA"). Plaintiff alleges that the correspondence sent out was deceptive and false in violation of the FDCPA. In contrast, ACB argues that the

correspondence did not warrant any plausible misleading or incorrect interpretation and, therefore, does not violate the FDCPA.

Through this motion, ACB asks that discovery be initially limited to Plaintiffs' claims that the debt collection correspondence sent to them by ACB, listing an "Amount Due" different than the "Amount Owed," was false, deceptive or misleading. (ACB Br. at 1; Docket Entry 24). ACB believes Plaintiffs' individual claims regarding the correspondence involve a narrow, potentially dispositive issue that is isolated and distinct from class discovery. (*Id.* at 2). After conducting the aforementioned limited discovery, ACB anticipates filing a motion for summary judgment with regard to Plaintiffs' [*3] individual claims that ACB's correspondence to them violated the FDCPA because it was deceptive and false. (ACB Reply Br. at 1; Docket Entry No. 29).

ACB contends that bifurcating discovery in this manner represents the most efficient and effective approach to this litigation. Specifically, ACB claims that bifurcating discovery would allow the parties to expeditiously reach potentially case dispositive motion practice. In this regard, ACB notes that if its anticipated motion for summary judgment is granted, said motion would dispose of the entire action, maximizing efficiencies and cost savings by rendering class discovery entirely unnecessary. (ACB Br. at 2). Further, ACB claims that even if its summary judgment motion is denied, the case will not have been derailed because complete class discovery can still occur without any prejudice to Plaintiffs.

Relying on *Physicians Healthsource, Inc. v. Janssen Pharmaceuticals, Inc.*, No. 3:12-cv-02132 FLW-TJB, Docket Entry No. 52-1 (D.N.J. Sept. 13, 2013), ACB argues that bifurcation is appropriate given the narrow, potentially case dispositive issue to be

addressed by the Court coupled with the fact that class wide discovery creates significant [*4] costs and burdens it and the Court. (*Id.* at 3). ACB notes that in *Physicians Healthsource*, the Court granted a motion to bifurcate where there was a limited and potentially dispositive issue involving the plaintiff's Telephone Consumer Protection Act ("TCPA") claim. In so doing, the Court took note of the costs associated with class discovery as well as the fact that the defendant's anticipated summary judgment motion could render said discovery unnecessary.

With respect to the discovery already sought by Plaintiffs, ACB argues that several of the class discovery demands propounded are unduly burdensome on their face. ACB notes that it uses a third party vendor to generate its debt collection correspondence and that the production of the information requested would require ACB to review private information and medical claim information with regards to members of the proposed class and family members of the class insured under their guarantor's healthcare policy. (*Id.* at 2-3). Thus, ACB anticipates dealing with HIPAA issues in the course of providing the information requested by Plaintiffs. (*Id.* at 3).

ACB notes that pursuant to [*Fed.R.Civ.P. \("Rule"\) 42\(b\)*](#), it is within a trial court's discretion to bifurcate discovery and courts [*5] consider judicial economy and expedition when making such a decision. (*Id.*) ACB argues that because there is no significant overlap between the individual discovery relevant to Plaintiffs' specific claims and class-wide discovery, there is no danger of duplication or of increase in litigation costs if discovery is done in two steps. (ACB Reply Br. at 6). ACB claims that conducting discovery in two phases will neither be protracted nor unduly delay these proceedings because key, pertinent facts relevant to the individual claims

are already in the record as well as the Rule 26 disclosures served by the parties. Further, ACB notes that initial written individual discovery is well underway, including ACB's document production, interrogatory responses, and responses to Plaintiffs' requests for admissions. (*Id.* at 7).

Further, ACB argues that the earlier denial of its motion to dismiss does not constitute a determination that Plaintiffs' individual FDCPA claims are meritorious because the applicable standard for a motion to dismiss is highly deferential; whereas, the applicable standard for a motion for summary judgment requires Plaintiffs to present more facts and evidence to establish their claims. (ACB [*6] Br. at 4). ACB contends that the Court has yet to consider the meaning of the two amounts listed on the debt collection correspondence and, thus, has not made a decision on whether Plaintiffs have legally viable claims. (*Id.*) ACB argues that discovery should be bifurcated to address this narrow issue first so that ACB can file a motion for summary judgment on same. ACB argues that doing so would allow the Court to address the merits of this issue before determining class certification, a costly and time consuming undertaking. (*Id.* at 4-5). As a result, ACB claims that bifurcating discovery would preserve judicial resources and the litigants' resources as well. Lastly, ACB argues that denying bifurcation would prevent an early and efficient determination regarding the merits of Plaintiffs' individual claims and, therefore, would go against the principles embodied in Rule. 1. (*Id.* at 5-6).

In response to Plaintiffs' arguments asserting that their requested class discovery only entails production of debt collection correspondence to all class members, ACB points out that Plaintiffs have yet to withdraw their other class-based discovery requests or their discovery requests directed to Defendants' net worth information. [*7] (ACB

Reply Br. at 5). Because Plaintiffs have failed to offer any explanation regarding their additional class-based discovery requests and have, likewise, failed to have withdrawn same, ACB claims bifurcation is necessary. Further, ACB contends that even providing only debt collection correspondence to all class members would prove burdensome to it for the reasons described above.

Plaintiffs, however, claim that the requested bifurcation should be denied because ACB cannot meet the legal standard for it in part because the requested discovery is neither overly complicated nor unduly burdensome. As such, Plaintiffs argue that ACB's motion should be denied. (Pl. Opp. Br. at 2; Docket Entry 28). With respect to the discovery requests they have served, Plaintiffs suggest entering into Stipulation/Consent Order limiting same. (*Id.*) Plaintiffs argue that really the only class discovery at issue is directed to the sole issue of how many letters similar to that sent to Plaintiffs were mailed by ACB to other New Jersey consumers during the class period. (*Id.*) Plaintiffs contend that medical information, including sensitive HIPAA information, will not be needed in the course of discovery. Indeed, [*8] Plaintiffs assert that they only request the debt collection letters sent by ACB. (*Id.* at 3).

Further, Plaintiffs contend that ACB's arguments regarding the burdensomeness and cost of not bifurcating discovery are totally conclusory in nature and should be afforded no weight. In this regard, Plaintiffs argue that ACB's claims amount to nothing more than blanket generalizations without any evidence of the approximate costs associated with discovery, name of the third party vendor alluded to by ACB or the business relationship between ACB and that vendor. (*Id.* at 3-4). Plaintiffs distinguish this matter from the *Physicians Healthsource* case, noting that that matter involved a TCPA violation, not a

FDCPA violation. (*Id.* at 5).

Relying on [Rule 42\(b\)](#), Plaintiffs argue that ACB has failed to sustain its burden because it has yet to prove that bifurcation would best serve the interests of judicial economy and that it would not unduly prejudice Plaintiffs. Further, Plaintiffs argue that here there is no need to divide discovery as to liability and damages. (*Id.* at 6-7). Again, Plaintiffs claim that it would not be burdensome for ACB to provide Plaintiffs with the form debt collection letters, similar to the debt collection letter ACB mailed [*9] them, which were sent to New Jersey consumers that stated different monetary amounts for "Amount Owed" and "Amount Due." For these reasons, Plaintiffs argue that ACB's motion to bifurcate discovery should be denied.

II. Analysis

[Federal Rule of Civil Procedure 42\(b\)](#) governs requests to bifurcate. According to [Rule 42\(b\)](#), "[f]or convenience, to avoid prejudice, or to expedite and economize, the court may order a separate trial of one or more separate issues, claims, crossclaims, counterclaims, or third-party claims." Under [Rule 42\(b\)](#), "a district court has broad discretion in separating issues and claims for trial as part of its wide discretion in trial management." [Medpointe Healthcare, Inc. v. HiTech Pharmacal Co., Inc., Civil Action No. 03-555 \(MLC\), Civil Action No. 04-1686 \(MLC\), 2007 U.S. Dist. LEXIS 4652, at *12-13 \(D.N.J. Jan. 22, 2007\)](#) (internal quotation marks and citation omitted). Further, the broad discretion afforded courts in handling discovery disputes extends to decisions over bifurcating discovery. See [Weiss v. First Unum Life Ins. Co., Civil Action No. 02-4249 \(GEB\), 2008 U.S. Dist. LEXIS 21604, 2008 WL 755958, *1 \(D.N.J. March 19, 2008\)](#); see also [Bandai America Inc. v. Bally Midway Mfg. Co., 775 F.2d 70, 74 \(3d Cir. 1985\)](#) (holding that

bifurcation orders and orders controlling order of discovery are reviewed for abuse of discretion).

Here, the Court finds that bifurcating discovery as proposed by ACB is warranted under [Rule 42\(b\)](#). In this regard, the Court agrees with ACB that a narrow, [*10] potentially dispositive issue exists concerning whether ACB's correspondence to Plaintiffs violated the FDCPA's prohibition against deceptive and false communications. Further, the Court is not persuaded by Plaintiffs' argument that the denial of ACB's Motion to Dismiss precludes summary judgment being granted in ACB's favor. The District Court never determined whether the existence of the two conflicting amounts on the debt correspondence does, in fact, represent a violation of the FDCPA as argued by Plaintiffs. As a result, depending on what evidence is ultimately presented, the District Court may determine that summary judgment is warranted.

In addition, the Court finds that whether ACB's correspondence to Plaintiffs is deceptive and false is a narrow and distinct issue that does not implicate class wide discovery. Further, the Court finds that there will be no significant overlap between the two and therefore no real danger of a duplication of efforts or corresponding increase in litigation costs. Moreover, the Court finds that bifurcating the two issues has the potential to save the parties and the Court from the substantial costs and burdens associated with whole scale class action [*11] discovery. While Plaintiffs fault ACB for not supporting their claims concerning the burdens and costs associated with class action discovery, it is generally recognized that class actions involve the potential "for hefty litigation expenses and an extensive use of judicial resources in the resolution of these claims[.]" [Bais Yaakov of Spring Valley v. Peterson's Nelnet, LLC, Civ. No. 11-00011, 2013 U.S. Dist. LEXIS 23973, 2013 WL](#)

[663301, at *5 \(D.N.J. Feb. 21, 2013\)](#). It is also generally understood that the costs can be particularly "enormous" for defendants. *Id.* Furthermore, while the Court agrees with Plaintiffs that medical information, including sensitive HIPAA information, will likely not be needed in the course of discovery, the Court finds that bifurcating discovery and, as a result, providing ACB with an opportunity to file a motion for summary judgment, will best serve the interests of judicial economy and promote efficiency.

For the reasons stated above, the Court finds that bifurcating discovery into two phases will promote the efficient resolution of this matter. It will allow the Court to address a narrow, potentially dispositive issue in a timely and cost effective manner with no significant prejudice to Plaintiffs. Consequently, the Court hereby bifurcates discovery as requested by ACB. The parties are therefore [*12] directed to meet and confer to submit a proposed schedule for the first phase of discovery. This schedule shall be submitted no later than **September 14, 2015**.

III. Conclusion

For the reasons set forth above, ACB's motion to bifurcate discovery is GRANTED. An appropriate Order follows.

Dated: August 25, 2015

/s/ Tonianne J. Bongiovanni

HONORABLE TONIANNE J. BONGIOVANNI

UNITED STATES MAGISTRATE JUDGE

ORDER

This matter having been opened to the Court upon Defendant ACB Receivables Management, Inc.'s ("ACB") motion to bifurcate discovery [Docket Entry No. 24]; and Plaintiffs Logan Loreaux and Katelyn Jones

("Plaintiffs") having opposed ACB's motion; and the Court having considered all arguments made in support of and in opposition to ACB's motion; and the Court having considered ACB's motion without oral argument pursuant to L.Civ.R. 78.1(b); and for the reasons set forth in the Court's accompanying Memorandum Opinion; and for good cause shown;

IT IS on this 25th day of August, 2015,

ORDERED that ACB's motion to bifurcate discovery is GRANTED; and it is further

ORDERED that the parties submit a joint schedule in accordance with the accompanying Memorandum Opinion no later than **September 14, 2015**; and it is further [*13]

ORDERED that the Clerk of the Court terminate the aforementioned motion [Docket Entry No. 24] accordingly.

/s/ Tonianne J. Bongiovanni

HONORABLE TONIANNE J. BONGIOVANNI

UNITED STATES MAGISTRATE JUDGE

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